

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 7, 2008

STATE OF TENNESSEE v. MIKEL PRIMM

Direct Appeal from the Circuit Court for Dickson County
Nos. CR8077, CR8567 Robert E. Burch, Judge

No. M2007-0725-CCA-R3-CD - Filed February 20, 2009

The defendant, Mikel Primm, was convicted of two counts of failure to appear, Class E felonies, and received consecutive sentences of three years and two years in the Tennessee Department of Correction. In this consolidated appeal, he challenges the sufficiency of convicting evidence. Upon review of the record and the parties' briefs, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which DAVID H. WELLES and THOMAS T. WOODALL, JJ., joined.

Geoffrey Coston, Franklin, Tennessee, for the appellant, Mikel Primm.

Robert E. Cooper, Jr., Attorney General and Reporter; Mary W. Francois, Assistant Attorney General; Dan M. Alsobrooks, District Attorney General; and Carey Thompson, Suzanne Lockert, and Lisa Donegan, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

FACTUAL BACKGROUND

On September 1, 2005, the defendant was indicted for failure to appear at trial on the charges of sale of cocaine and conspiracy to sell cocaine set to be heard on July 18, 2005. A trial was held on January 11, 2006. At trial, Ms. Pamela Myatt, the Circuit Court Clerk for Dickson County testified. Ms. Myatt stated that her job duties included recording statements by the trial judge. She explained her practice in keeping the docket sheets for the trial court and the method of informing a defendant of a trial date. According to Ms. Myatt, the docket sheet indicated that the defendant was arraigned on November 10, 2003. Ms. Myatt stated that the defendant was told to return on January 16, 2004, which would have been his appearance day. Referring to the docket sheet, Ms. Myatt said that on March 8, 2004, the defendant was given a trial date of March 30, 2004. However, due to the number of trials set on March 30, 2004, the defendant's trial was rescheduled for

November 16, 2004. The defendant's trial was again reset to November 29, 2004. Ms. Myatt noted that the defendant was present on November 29, 2004 and signed "a bond and the bond ha[d] a bond date of March 9, 2005, which would have been his next trial date." Ms. Myatt also recalled that the defendant was instructed by the trial judge to be back in court for trial on March 9, 2005. However, due to a heavy court calendar, the defendant's trial was rescheduled again on March 9, 2005 to March 14, 2005. Mr. Myatt said that the docket sheet indicated that the defendant was directed to appear in court on March 14, 2005. On March 14, 2005, the defendant was instructed to return for trial on July 18, 2005. On July 18, 2005 the defendant did not appear for trial and a conditional forfeiture was entered. Ms. Myatt confirmed that the defendant was represented by counsel and stated that at each court date, the judge would have given the defendant or his lawyer a return date.

On cross-examination, Ms. Myatt admitted that she did not have first-hand knowledge that the defendant was informed of his July 18 court date. Ms. Myatt noted that it was the defendant's responsibility to keep up with his court dates. Ms. Myatt agreed that the defendant appeared for eight of his court dates but did not appear for the last one.

Based on this evidence, the jury found the defendant guilty of the charge of failure to appear and he was sentenced to three years in the Department of Correction.

In a separate case, the defendant was indicted for failure to appear at trial on charges of sale of cocaine and conspiracy to sell cocaine set on March 27, 2006. At his trial held on April 4, 2007, the court took judicial notice of the docket sheet at the request of the state. Ms. Myatt, testified that the docket sheet indicated that the defendant was arraigned on November 10, 2003, and he was informed that his trial was set for March 30, 2004. However, the defendant's trial was rescheduled for November 16, 2004, and again for November 29, 2004. Ms. Myatt said that she believed that either the defendant or his counsel was present on November 29, 2004. Ms. Myatt explained that the trial was again reset to March 9, 2005. She noted that the docket sheet indicated that the defendant was released on bond and advised of his new trial date. On March 9, 2005, the defendant was instructed to appear on March 14, 2005. On March 14, 2005, the defendant appeared and was given a trial date of March 21, 2005. He appeared on March 21, 2005 and the trial was reset to November 22, 2005. The defendant was released on bond and informed that he was to come back on November 30, 2005. After a status check on November 30, 2005, the defendant's trial was reset for March 27, 2006. Ms. Myatt said that she assumed that the defendant was present on November 30, 2005, otherwise the court would have issued a capias for his arrest. Ms. Myatt said that on March 27, 2006, the defendant failed to appear before the court for trial, and a capias was issued for his arrest. The defendant was eventually arrested on September 11, 2006.

On cross-examination, Ms. Myatt acknowledged that the docket sheets indicated that the defendant had appeared for eight out of nine trial dates and was present on his arraignment date. Ms. Myatt said that she believed the defendant was present and informed of his November 30, 2005 date because a capias was not issued against the defendant on that date. Ms. Myatt said that the trial judge announced the March 27, 2006 court date because she recorded the date on the docket sheet.

However, Ms. Myatt could not recall if the defendant was present in the courtroom when the trial judge announced the date.

On redirect examination, Ms. Myatt agreed that she would not have written down the March 27, 2006 trial date if it had not been announced by the court. She confirmed that the docket sheet showed the defendant made bond and was released on November 29, 2005. He returned on his own on November 30, 2005 when the March 27, 2006 trial date was announced.

The defendant testified on his own behalf. The defendant denied that he was informed of the March 27, 2006 court date. He remembered being in court about one week before his bond was issued in November of 2005, but denied he was given a trial date. The defendant was arrested about six months after he missed the March 2006 trial date. He claimed that during that time the court had his address but did not contact him.

On cross-examination, the defendant agreed that he was present in court on November 30, 2005, however, he denied receiving a trial date. He acknowledged that every time he had come to court on previous occasions, he had received a new court date. The defendant stated that he wanted to go to trial, however, he thought that a trial date was set without his knowledge. He further believed that the underlying charges were false. The defendant claimed that he did not recall what occurred at the November 30, 2005 hearing, and stated “[t]hey reset it I guess.”

Based on the evidence presented, the defendant was convicted of failure to appear and sentenced to two years in the Department of Correction to be served consecutive to his three year sentence for failure to appear.

ANALYSIS

In this consolidated appeal, the defendant challenges the sufficiency of the evidence as to his convictions for failure to appear. Specifically, the defendant submits that while the state established he was not present on his final court dates, the evidence was legally insufficient to establish that he knowingly failed to appear because he was not informed of his final court dates.

Upon review, we recognize the well-established rule that once a jury finds a defendant guilty, his or her presumption of innocence is removed and replaced with a presumption of guilt. *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992). Therefore, on appeal, the convicted defendant has the burden of demonstrating to the appellate court why the evidence will not support the jury's verdict. *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000); *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). To meet this burden, the defendant must establish that no “rational trier of fact” could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); see *State v. Evans*, 108 S.W.3d 231, 236 (Tenn. 2003); see also Tenn. R. App. P. 13(e). The jury’s verdict, once approved by the trial judge, accredits the state's witnesses and resolves all conflicts in favor of the state. *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992). The state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which

may be drawn from that evidence. *Carruthers*, 35 S.W.3d at 558. Questions concerning the credibility of the witnesses, conflicts in trial testimony, the weight and value given to the evidence, and all factual issues raised by the evidence are resolved by the trier of fact and not this court. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). We do not attempt to re-weigh or re-evaluate the evidence. *State v. Reid*, 91 S.W.3d 247, 277 (Tenn. 2002).

Under Tennessee Code Annotated section 39-16-609, “[i]t is unlawful for any person to knowingly fail to appear as directed by a lawful authority if the person . . . [h]as been lawfully released from custody, with or without bail, on condition of subsequent appearance at an official proceeding at a specified time or place” Tenn. Code Ann. § 39-16-609. A person acts knowingly when, with respect to a result of the person’s conduct, “the person is aware that the conduct is reasonably certain to cause the result.” *Id.* § 39-11-302(b). A person acts knowingly “. . . when he or she is aware of the conduct or is practically certain that the conduct will cause the result, irrespective of his or her desire that the conduct or result will occur.” *Id.* Sentencing Commission Comments.

A crime may be established by direct evidence, circumstantial evidence, or a combination thereof. *State v. Hall*, 976 S.W.2d 121, 140 (Tenn.1998). Evidence concerning a defendant’s release on bond, a defendant’s failure to appear at a scheduled trial date, the consequential issuance of a capias ordering a defendant’s arrest, and a defendant’s subsequent absence from proceedings are sufficient to support a jury’s verdict of guilt of failure to appear. *State v. Edward Talmadge McConnell*, No. E1998-00288-CCA-R3-CD, 2000 WL 688588 (Tenn. Crim. App. at Knoxville, May 30, 2000), *perm. app. denied* (Tenn. Jan. 8, 2001).

In the instant cases, the evidence clearly was sufficient to support the juries’ findings that the defendant knowingly failed to appear on July 18, 2005 and on March 27, 2006 for his trial dates. We decline to disturb the juries’ assessment and consequent verdicts. The defendant is not entitled to relief on this issue.

CONCLUSION

Based on the foregoing, we affirm the judgments of the trial court.

J.C. McLIN, JUDGE